

# UNITED STATES BANKRUPTCY COURT

## SOUTH CAROLINA

### **Clerk's Instruction: Disposition of Unclaimed Dividends (CI- 3011-1<sup>1</sup>)**

The procedures to be followed by any creditor or party seeking release of funds deposited in the United States Treasury by the court pursuant to 11 U.S.C. § 347(a) are as follows:

The creditor or party shall file simultaneously with the clerk of this court the following:

- (a) Identification Form for Unclaimed Dividend (Note: there are two forms-one for an individual and one for a corporation/business). See Local Official Forms 3011-1(a) and 3011-1(b)
- (b) Motion for Payment of Unclaimed Dividend with Certificate of Service. See Local Official Form 3011-1(c) ; and
- (c) Order for Payment of Unclaimed Dividend. See Local Official Form 3011-1(d).

(1) **Requirements for *Pro Se* Creditor/Claimant; Self Representation.**

(A) A motion for payment of an unclaimed dividend must be filed with the clerk. The motion must be accompanied by a certificate signed by the creditor/claimant reflecting that the motion was served on the United States Attorney for the District of South Carolina, 1441 Main Street, Suite 500, Columbia, South Carolina 29201, as required by 28 U.S.C. § 2042, and on the United States Trustee, 1835 Assembly Street, Suite 953, Columbia, South Carolina 29201. The motion must state: (1) the name, address, telephone number of the creditor/claimant and a brief history of the creditor/claimant from the filing of the claim to the date of the motion (to establish possible reasons why the fund was not deliverable at the time of original distribution); (2) whether the creditor/claimant believes that any other party may be entitled to the fund; and (3) whether the claim has been assigned to the creditor/claimant. The motion must be accompanied by copies of all documents evidencing any assignment of the claim.

(B) If the creditor/claimant is:

- (i) an individual not personally appearing before the clerk or the clerk's authorized designee, the motion must be accompanied by a certificate of a notary public, which bears the seal of the notary, that the notary has examined the motion and documents presented by the creditor/claimant establishing the creditor/claimant's identity, such as a birth certificate, an unexpired passport, a valid driver's license, or an original social security card;

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<sup>1</sup>See SC LBR 3011-1

- (ii) a representative of the estate of a deceased claimant not appearing before the clerk or the clerk's authorized designee, the motion must be accompanied by a certificate of a notary public, which bears the seal of the notary, that the notary has examined the motion and documents presented by the representative establishing the representative's identity, and the motion must also be accompanied by copies of probate documents establishing the representative's right to act on behalf of the decedent's estate;
- (iii) a corporation or partnership, the motion must be accompanied by an affidavit of a duly authorized corporate officer (if a corporation) or a general partner (if a partnership) certifying that the representative signing the motion is a duly authorized representative of the corporation or partnership. If the creditor/claimant is a successor corporation or partnership, the creditor/claimant shall attach to the motion copies of documents establishing the derivation of the creditor/claimant's entitlement to receive the proceeds of the claim.

**(2) Requirements for Any Other Individual Representing the Interests of a Creditor/Claimant.**

- (A) The representative must be an attorney admitted to practice in accordance with South Carolina Local Bankruptcy Rule 9010-1 and Local Rule 83.I.01 of the Local Rules of the United States District Court for the District of South Carolina.
- (B) The attorney must file a motion with the court for an order authorizing return of an unclaimed dividend as prescribed by Federal Rule of Bankruptcy Procedure 9013.
- (C) The motion must contain the name, address, and telephone number of the creditor/claimant and brief history of the creditor from the filing of the claim to the date of the filing of the motion (to establish possible reasons why the fund was not deliverable at the time of original distribution). If applicable, proof of any sale of the company, new and prior owners and a copy of the terms of any purchase agreement or stipulation by prior and new owners of right of ownership to the unclaimed fund must be provided. If the claim has been assigned to the creditor/claimant, copies of all documents evidencing assignment must be appended to the motion. The motion must state whether or not the moving party believes that any other party may be entitled to the fund.

The motion must be accompanied by a certificate of mailing reflecting that the motion was served on the United States Attorney for the District of South Carolina, 1441 Main Street, Suite 500, Columbia, South Carolina 29201, as required by 28 U.S.C. § 2042, and on the United States Trustee, 1835 Assembly Street, Suite 953, Columbia, South Carolina 29201.

- (D) An original power of attorney from the creditor/claimant authorizing the attorney to represent the interests of the creditor/claimant must be attached to the motion.

(3) **Action on motion.**

If no objections are filed with the court within twenty (20) days after the filing of the motion, the motion and accompanying documents will be submitted to the court for determination. If an objection is timely filed with the court, the motion and objection will be forwarded to the court for either scheduling a hearing or making a determination on the motion. If the motion and accompanying documents are not properly executed, and the procedures and requirements outlined above are not met, the court may deny the motion pursuant to SC LBR 3011-1.